

# LEGISLATIVE UPDATE

COVERING CRIMINAL JUSTICE LEGISLATIVE ISSUES

AUGUST 2001, No. 11

DEPARTMENT OF PUBLIC ADVOCACY

## REPORT CARD

on

### KENTUCKY'S BLUE RIBBON GROUP

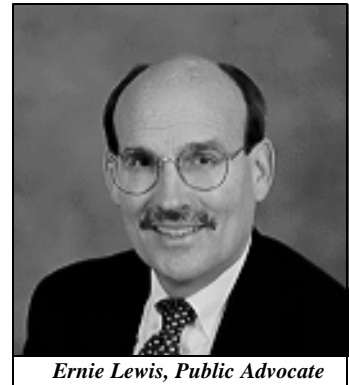
RECOMMENDATION No. 1: Co-Equal Partner .....	B
RECOMMENDATION No. 2: Significant Increase in Funding .....	B+
RECOMMENDATION NO. 3: Completion of full-time system .....	A-
RECOMMENDATION NO. 4: Higher Salaries .....	A-
RECOMMENDATION NO. 5: Loan Forgiveness .....	D-
RECOMMENDATION NO. 6: Lower Caseloads .....	C-
RECOMMENDATION NO. 7: Improved collection of fees .....	C+
RECOMMENDATION NO. 8: Increase when judicial position added .....	D-
RECOMMENDATION NO. 9: Counsel available to children .....	B
RECOMMENDATION NO.10: Capital Defense .....	C-
RECOMMENDATION NO. 11: AOC/DPA Collaboration on eligibility .....	B-
RECOMMENDATION NO. 12: \$11.7 Million needed .....	B-

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# THE BLUE RIBBON GROUP AND THE REPORT CARD: WHERE IS THE KENTUCKY PUBLIC DEFENDER SYSTEM TODAY?

by Ernie Lewis, Public Advocate



Ernie Lewis, Public Advocate

*The Kentucky Blue Ribbon Group on Improving Indigent Defense in the 21<sup>st</sup> Century* issued its Final Report on June 1, 1999. That Final Report, and its 12 recommendations, has been highly influential in the public policy arena. In June of 1999, the Kentucky Criminal Justice Council endorsed 11 of the 12 recommendations. Even the 12<sup>th</sup> recommendation, which contained the \$11.7 million figure needed by the Kentucky indigent defense system, was not defeated; rather, the KCJC took the position that it should not be either endorsing or rejecting a specific budget proposal. The endorsement of the Kentucky Criminal Justice Council was communicated to Governor Paul Patton by Secretary of the Justice Cabinet, Judge Robert Stephens, by letter. In August of 1999, Judge Stephens, several members of the *Blue Ribbon Group*, and I met with Governor Patton, Secretary of the Governor's Cabinet, Crit Luallen, and Budget Director James Ramsey, and presented the Blue Ribbon Group recommendations. Later, the Governor expressed support for those recommendations, and included \$10 million in his biennial budget to fund partially those recommendations. The 2000 General Assembly concurred with the Governor's budget recommendation. As a result, the budget for the Department of Public Advocacy was increased by \$4 million in FY00, and \$6 million in FY 01. \$5.7 million remains unfunded to complete the *Blue Ribbon Group* recommendations.

June 2001 is an appropriate time to take stock of the *Blue Ribbon Group Final Report*, to see what the added funding has accomplished, and to see what unfinished business remains. I have taken stock via a very simple method: the report card. While the grading system is highly subjective, it has provided a method for taking a simple look at what we've been able to accomplish since the 2000 Session of the General Assembly.

**Recommendation No. 1. Indigent Defense is a Necessary Function of Government, and an Essential and Co-Equal Partner in the Criminal Justice System.** I have given Kentucky a B on this recommendation. This is one of the least measurable of the recommendations. However, I believe that the *Blue Ribbon Group Report* has increased the stature of the Department of Public Advocacy among the Kentucky criminal justice system. DPA is actively involved in the Kentucky Criminal Justice Council. I chair one of the committees of the Council. DPA has presented its positions on a variety of topics before the Juvenile Justice Committee, the Corrections/Community-Based Sanctions Committee, and the Capital Com-

mittee this year. Our positions are considered seriously. The Chief Justice, the Executive Director of the KCJC, the Governor's General Counsel accompanied me, my Deputy, and the Director of the Louisville Public Defender's Office to last summer's Indigent Defense Symposium sponsored by the Attorney General and the US Department of Justice. Ed Monahan and Dan Goyette serve on the Ethics Committee of the KBA. Many of our local attorneys serve on a variety of boards. The goal of the BRG was to have indigent defense recognized as a vital, co-equal partner in the criminal justice system. DPA is well on its way to achieving this goal. **Unfinished business: Defenders must continue to be involved in the local and statewide criminal justice system.**

**Recommendation No. 2. The Kentucky Public Defender System Cannot Play its Necessary Role for Courts, Clients, and the Public in this Criminal Justice System Without Significant Increase in Funding.** Kentucky has earned a B+ for the \$10 million it has pumped into indigent defense during the FY01-02 biennial budget. This has had a significant impact on two benchmarks that were considered seriously by the *Blue Ribbon Group*. In FY98, per-capita funding in Kentucky was at \$4.90. That per-capita funding level is presently at \$6.60. The goal set by the *Blue Ribbon Group* was almost \$8 per-capita. In 1998, "Kentucky ranked last in cost-per-case out of the twelve states for which we obtained FY1998 information." The cost-per-case in FY98 was \$187. In FY 01, if caseload remains steady, it will have risen to \$260 per case. It was \$216 per case in FY00, the last year for which DPA had complete caseload data. *The Blue Ribbon Group* goal was \$300 per case. Yet, Kentucky continues to fund indigent defense at only 3% of the criminal justice dollar, compared to 7% for prosecution, 21% for the judiciary, 4% for criminal justice training, 14% for juvenile justice, and 14% for the state police. **Unfinished business: \$5.7 million needs to be added to the General Fund appropriation level.**

**Recommendation No. 3. The Full-Time System Should be Completed.** Kentucky gets an A- on this recommendation. When I started as Public Advocate in 1996, 47 counties were covered by a full-time office; in 2000, 82 counties were served by a full-time office. The 2000 General Assembly put enough money into the General Fund to expand the full-time system to an additional 27 counties. Today, 104 counties are covered by a full-time office. In FY02, the Bullitt County Office will open, and the Murray Office will expand, picking up Graves

County and allowing the Paducah Office to pick up the four river counties of Ballard, Carlisle, Fulton, and Hickman Counties. By the end of FY02, 109 counties will be in a full-time office. **Unfinished business: 11 counties to be covered by a full-time office.**

**Recommendation No. 4. Higher Salaries Should Be Paid to Defenders and Prosecutors; Salary Parity is the Goal.** Kentucky has raised public defender salaries significantly since 2000. Starting salaries of \$23,388 were raised to \$28,485. Experienced attorneys received an 8% increase in addition to their 5% annual increment. In FY02, starting salaries for defenders will be raised to \$33,425.04. Experienced attorneys received 9.6% increase in addition to their 5% annual increment in FY02. Salary parity has been achieved between defenders and the Attorney General's Office and other attorneys in state government. However, starting salaries for attorneys in the Prosecutor's Advisory Council (PAC) remain higher than starting salaries for state government lawyers. The starting salary for FY02 for PAC lawyers will be \$35,000. **Unfinished business: Salary parity with attorneys in PAC.**

**Recommendation No. 5. Loan Forgiveness Programs Should Be Made Available to Prosecutors and Defenders.** Kentucky gets a D-. A bill introduced in the 2000 General Assembly did not move far in the process. Defenders continue to carry large student loans coming out of law school. Recruiting continues to be hindered by the absence of a loan forgiveness program. Higher salaries have been helpful; however, many recruits have told us that high student loans are forcing them to hire on with a private law firm which pays a much higher starting salary rather than with DPA because they simply cannot afford the student loan payment. DPA will work with prosecutors in the 2002 General Assembly to try to make loan forgiveness a reality. **Unfinished business: Loan forgiveness for both prosecutors and defenders.**

**Recommendation No. 6. Full-Time Trial Staff Should Be Increased to Bring Caseloads Per Attorney Closer to the National Standards. The Figure Should Be No More Than 350 in Rural Areas and 450 in Urban Areas.** 35 new lawyers were requested by the *Blue Ribbon Group Report*. Only 10 were funded by the 2000 General Assembly, and those were funded to begin in April of FY01. Thus, no relief from high caseloads has yet occurred. Fortunately, caseloads have declined slightly along with the crime rate, and thus the average caseload-per-attorney in Kentucky in FY00 dipped to 428 per lawyer per year in FY00 from 475 in FY99. Caseloads remain far too high in some places. As of January 2001, caseloads for FY01 were projected to be at 581 per-attorney in Columbia, 513 in Hazard, and 665 in Henderson. Thus, Kentucky gets a C-. **Unfinished business: 25 more caseload lawyers are needed even if caseloads do not rise in the near future.**

**Recommendation No. 7. The Department of Public Advocacy and the Court of Justice Must Increase their Efforts to Collect Reasonable Fees from Public Defender Clients, Including Considering the use of Private Collection Organiza-**

**tions.** The grade is a C+. *The Blue Ribbon Group* found in 1999 that "[t]he Department of Public Advocacy is Effective in Indigent Defense Cost Recovery Compared to Other States." (Finding #3). The Department of Public Advocacy has continued to contact judges and clerks on a quarterly basis, providing information regarding the collection of the DUI fee, the Administrative Fee, and Recoupment. The DUI fee increased in 2000 to \$62.50 per DUI conviction from \$50. However, revenue overall has remained steady, and recoupment has declined. DPA has been involved in a pilot project with a collections law firm in Jefferson County; results from this pilot are uncertain. **Unfinished business: Complete the pilot project to determine if collections can improve the revenue picture.**

**Recommendation No. 8. Prosecutor and Defender Increases Should be Considered when a Judicial Position is Added.** Kentucky gets a D-. This recommendation was written into the 2000 budget document. However, it was taken out during the process. New judicial positions were added into the 2000 budget, but no new defender positions resulted. In one instance, additional monies were provided from the Necessary Governmental Expense Account when a 2<sup>nd</sup> District ridge was added. New prosecutor positions are typically granted when judicial positions are added. **Unfinished business: this recommendation should be reconsidered by policy-makers.**

**Recommendation No. 9. It is Important that Public Defender Counsel be Available to Children in Juvenile Court Proceedings.** The grade of B is awarded here. This recommendation likewise suffers from the difficulty of objective measurement. The Children's Law Center noted in their 1996 Report that juvenile representation in Kentucky was poor. The Department of Public Advocacy has since added significant educational opportunities for juvenile defenders. The growth of the full-time system likewise was intended partly to address the quality issue in juvenile representation. It is believed that this likewise has helped address the unrepresented juvenile problem where children are landing in treatment centers without ever having been advised by counsel. Anecdotally the problem remains. The 2000 General Assembly considered a bill that would have required all juveniles accused of a felony or a sex offense to consult with counsel prior to waiving counsel. Completion of the Full-time system will also assist in reaching this goal by having a system in place to provide full-time attorneys in juvenile court. **Unfinished business: Pass a bill that would address the problem of unrepresented children.**

**Recommendation No. 10. It is Imperative that Kentucky Reasonably Fund Indigent Capital Defense both at the Trial and Post-Trial Levels.** Kentucky gets a C-. *The Blue Ribbon Group* funding recommendation included \$1.6 million being added to capital defense. Only 1 capital trial lawyer was funded out of the \$10 million biennial budget addition. The regionalization of capital trial defense remains unfunded but definitely needed. Trial offices continue to suffer when a

*Continued on page 4*

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capital case must be handled but no additional funding is available to handle that case. **Unfinished business: Complete funding of capital defense including funding for regional capital trial teams.**

**Recommendation No. 11. Public Defender Services are Constitutionally Mandated while Resources are Scarce. It is Important for all Eligible Persons who want to be Represented by a Lawyer, but only those who are Eligible, to be Appointed a Public Defender. The Court of Justice, and Especially AOC and DPA are Encouraged to Work Cooperatively to Ensure Appropriate Public Defender Appointments.** The grade of B- is given here. DPA has written a new policy on defender eligibility. DPA and AOC are creating a workgroup to address the issue of eligibility for public defenders. **Unfinished business: DPA and AOC need to work together to achieve this recommendation.**

**Recommendation No. 12. The \$11.7 Million Additional Funding for Each of the 2 Years Is Reasonable and Necessary to Meet DPA's Documented Funding Needs as Described in PD21. \*See Appendix C.** Appendix C was part of the *Blue Ribbon Group Final Report* and is reprinted for convenience. Kentucky gets a B- for including \$10 million new General Fund dollars in the budget for indigent defense, including \$6 million in FY02. \$5.7 remains to be added to the General Fund to achieve the recommendation of the *Blue Ribbon Group*. Further, the economic downturn caused \$447,000 to be taken out of DPA's FY01 budget. Higher budget reduction levels are expected for FY02. **Unfinished business: \$5.7 million needs to be added to the General Fund for the Department of Public Advocacy to achieve the goal envisioned by the Blue Ribbon Group.**

The following table is a list of money required to complete the recommendations of the *Blue Ribbon Group* in 1999. ■

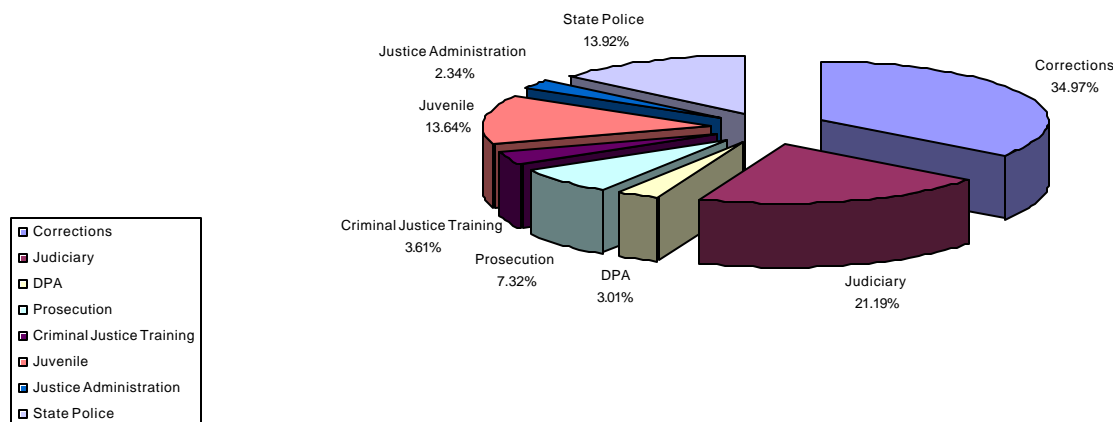
Appendix C Blue Ribbon Group Funding Recommendations/Initiatives Summary 2000-2002 Biennium			
Initiative	Est. FY 01 Cost	Est. FY 02 Cost	Est. Biennial Cost
Revenue Fund Deficit	\$400,000	\$400,000	\$800,000
<b>Juvenile Enhancement/Completion of Full-Time System :</b>			
· Expansion of full-time system to all counties	\$1,285,800	\$1,218,900	\$2,504,700
· Caseload reduction	\$1,902,000	\$1,838,800	\$3,740,800
· Infrastructure expansion	\$512,600	\$494,600	\$1,007,200
· Appellate Branch expansion	\$307,200	\$288,800	\$596,000
· Conflict Case Rate increased to \$300 per case/Of Counsel Rate increased to \$3,000 per case	\$294,600	\$294,600	\$589,200
· Additional Field Office support staff	\$923,800	\$855,600	\$1,779,400
· Additional Investigator staff	\$102,300	\$82,100	\$184,400
· Law clerks	\$50,000	\$50,000	\$100,000
<b>Fundamental Fairness for Public Defender Salaries :</b>			
· 30% salary increase	\$3,247,900	\$3,345,300	\$6,593,200
· Loan forgiveness program	\$150,000	\$150,000	\$300,000
Adequate Funding for Capital Defense	\$1,712,300	\$1,619,000	\$3,331,300
Insured Access to Courts for Adults and Juveniles	\$447,200	\$422,500	\$869,700
Equipment Replacement Cycle	\$394,650	\$316,489	\$711,139
<b>TOTALS</b>	<b>\$11,730,350</b>	<b>\$11,376,689</b>	<b>\$23,107,039</b>

## Funding for Kentucky Defenders, Prosecutors, and Criminal Justice System, FY02

For the Fiscal Year 2002 (July 1, 2001 - June 30, 2002), criminal justice expenditures in Kentucky are \$956 million, which is 5.67% of monies spent by the Commonwealth. This is up from FY 2000 when there was \$830 million or 5.43%. Final Budget Memorandum ([www.Lrc.state.ky.us/home/agency/](http://www.Lrc.state.ky.us/home/agency/)); (<http://162.114.4.13/budget/final/vol.1> pg.26) Appropriations for all of state government in FY02 is sixteen and three-quarter billion dollars. The FY02 criminal justice appropriations prior to any budget reductions of \$955,980,800 were divided as follows:

Corrections	334,321,900	34.97%
Judiciary	202,532,500	21.19%
State Police	133,052,600	13.92%
Juvenile	130,430,000	13.64%
Prosecution	69,972,900	7.32%
Criminal Justice Training	34,552,500	3.61%
DPA	28,747,500	3.01%
<u>Justice Administration</u>	<u>22,370,900</u>	<u>2.34%</u>
<b>Total</b>	<b>955,980,800</b>	<b>100%</b>

A graph indicating these percentages of expenditure for each Kentucky criminal justice program is:



From FY00 to FY02, funding for Kentucky prosecutors increased \$9.9 million from \$60 million to \$69.9 million. During this period, the prosecutors' percentage of the funds allocated to Kentucky criminal justice agencies increased from 7.23% to 7.32%.

From FY00 to FY02, funding for Kentucky defenders increased from \$22.4 million to \$28.7 million. During this period, defenders' percentage of the funds allocated to Kentucky Criminal Justice agencies increased from 2.7% to 3.01%.

In FY 02, Corrections has the most funding of Kentucky criminal justice agencies with \$334 million (or 35%), up from \$297 million in FY00. That means that \$.35 of every dollar appropriated for Kentucky criminal justice programs goes to Corrections, excluding incarceration of juveniles.

State Police and the Department of Juvenile Justice are each appropriated nearly \$.14 of every dollar that goes to criminal

justice programs in FY02. Prosecutors receive \$.07 and defenders receive \$.03 of every dollar appropriated for Kentucky criminal justice programs.

The Department of Public Advocacy's budget increase of \$6.3 million from FY00 to FY02 provided defender clients and the criminal justice system with a statewide public defender system significantly more capable of doing its part of providing a process that is fair and that provides results that the public can have confidence in relying on.

While defenders have received much needed new funding, there is unfinished business to insure this fairness and reliability for the future within a level playing field of resources.

Looking at defender funding and prosecutor funding in context of funding for the criminal justice system provides perspective on remaining defender funding needs. ■

## KENTUCKIANS SUPPORT SALARY PARITY OF DEFENDERS WITH PROSECUTORS

*UK Survey Research Center Report Shows  
85% Support for Salary Parity*

by Ed Monahan



Ed Monahan

**Defender Funding is Changing.** Kentucky has paid some of the poorest salaries among the 50 states to their public defenders for decades. The explanation is that over the years Kentucky's defender system has been one of the lowest funded defender programs in the nation utilizing the two recognized benchmarks: funding-per-case, and funding-per-capita. Funding for the Kentucky defender program and salaries for its defenders have changed through the leadership of Kentucky's Governor, General Assembly, Public Protection and Regulation Cabinet, Personnel Cabinet, and The *Blue Ribbon Group on Improving Indigent Defense in the 21<sup>st</sup> Century* (BRG). Salaries have been increased but there is more to be done to achieve the salary parity necessary for a level playing field.

**Public Strongly Supports Salary Parity.** An overwhelming number of people believe that prosecutors and defenders should receive equal pay. Recently, 85% of those polled in our Commonwealth said that Kentucky prosecutors and Kentucky defenders with the same level of experience should receive the same level of pay for working on the same type of cases. *The Spring 2000 Kentucky Survey* which surveyed 1,070 Kentuckians 18 years of age or older from May 18 – June 26, 2000 and which was conducted by the University of Kentucky Survey Research Center, asked the following question and had the following answers:

**Do you think Kentucky prosecutors and Kentucky public defenders with the same level of experience should receive the same level of pay for working on the same type of cases?**

Yes.....906.....84.7%

No.....93.....8.7%

Do not Know.....68.....6.4%

Refused to Answer... 3.....0.3%

The margin of error of the poll is approximately  $\pm 3\%$  at the 95 % confidence level. Households were selected using random-digit dialing, a procedure giving every residential telephone line in Kentucky an equal probability of being called.

**Reliable Results Furthered by Level Playing Field.** It makes sense that over 8 in 10 people in Kentucky believe defenders and prosecutors of the same experience doing comparable work should be paid the same because a level playing field is essential for the criminal justice system to do its job with reliability.

**The continued wave of releases** of innocent persons wrongly convicted supports the public sentiment for equality of pay. Kentucky is not exempt from wrong convictions. In July 2000, William Gregory of Louisville became the first convict in Ken-

tucky and the 74<sup>th</sup> in the United States and Canada to be released as a result of exoneration by DNA evidence.

The public wants confidence in their criminal justice system. People want fair process and results that are correct. Equal pay for defenders and prosecutors contributes to meeting the public's demands for an equitable system.

**THE BLUE RIBBON GROUP ENDORSES HIGHER SALARIES** The *Blue Ribbon Group* looked at what defenders were paid in other states. In 1999, the average entry level salary for public defenders in the 23 states studied by the BRG's consultant, The Spangenberg Group, was \$32,396. In 42% of the comparison jurisdictions, public defenders with five years of experience average over \$50,000 per year. In 50% of the jurisdictions, they earn over \$60,000. In only one state, Kansas, do they earn less than the \$38,012 paid in Kentucky. In view of these clear facts, the BRG made the following Finding and Recommendation on salaries:

Finding No. 6: The Department of Public Advocacy Ranks At, or Near, the Bottom of Public Defender Salaries Nationwide for Attorneys at All Experience Levels.

Recommendation No. 4: Higher Salaries Should Be Paid to Defenders and Prosecutors; Salary Parity is the Goal.

**Defender Salaries Substantially Increased.** Responding to the Governor's endorsement of the BRG Recommendation on salaries, the 2000 budget of the Kentucky General Assembly provided substantial increases for public defender salaries across Kentucky. That budget includes \$1.2 million for the first year and \$2.6 million for the second year of the biennium to improve the salaries of public defenders statewide at the entry level and throughout the higher classes. The original budget request based upon the salary recommendation of the *Blue Ribbon Group* was for a 30% increase in the salary of each defender. DPA requested 15% increase each year of the biennium. The press widely reported that the General Assembly funded 15% salary raises. Unfortunately that is not the case.

DPA has worked with the Governor's Office of Policy & Management (GOPM) and the Personnel Cabinet to determine how much the salary raises will be for defenders in view of the money provided. The starting salary for a public defender was increased from \$23,388 to \$28,485.60 during the first year of the biennium, July 1, 2000 to June 30, 2001 and is \$33,425.04 during the second year of the biennium, July 1,

2001 to June 30, 2002. This allows DPA to pay more reasonable entry level salaries. It assists in the recruiting and retention of new lawyers. All other defenders received an 8% increase in salary in the first year of the biennium and 9.6% in the second year of the biennium. This reduces turnover of senior, experienced staff who handle the capital and complex cases across the state.

**Prosecutors Start at \$4,000 More.** With these significant advances, there is nevertheless still a ways to go for defenders to reach a level playing field with prosecutors. The *Blue Ribbon Group's* Recommendation No.4 that "Salary Parity is the Goal" has not yet been achieved. Full-time Assistant Commonwealth Attorneys funded by the Unified Prosecutorial System had starting salaries of \$32,500 during the first year of the biennium, July 1, 2000 to June 30, 2001. During the second year of the biennium, July 1, 2001 to June 30, 2002, full-time Assistant Commonwealth Attorneys' starting salaries are \$35,000, which is \$1,575 more than defender starting salaries. Part-time Assistant Commonwealth Attorneys' salaries are \$22,500. Full-time Commonwealth Attorneys earn \$87,580 per year up from \$84,722.68 the previous year. Part-time Commonwealth Attorneys earn \$52,548 up from \$50,833.61. County Attorneys, who are all part-time, have starting salaries of \$52,548.

**DPA Losing Attorneys to Prosecutors.** Across Kentucky, the Department of Public Advocacy continues to lose significant numbers of its attorney staff to prosecutors who pay them more for working on the same type of cases. When this is combined with those DPA losses to more lucrative private practice, the effect on DPA is substantial. The Department is

not only at a recruiting disadvantage because of the salary disparity but it is also losing staff it has invested substantial training in to prosecutors who pay them a higher salary.

A few examples illustrate the problem. A new attorney left DPA's Bowling Green office to work for the Warren County Attorney's Office at a higher salary in 2000. In March 1999 a Paintsville full-time public defender left DPA after only 3 months to become an Assistant Commonwealth Attorney in Somerset at a \$4,000 increase in salary. Within a three year period, the Paducah public defender office saw five of its attorneys leave with 3 of them going to become prosecutors with a \$10,000 raise for two of them and a \$12,000 raise for the third. An attorney in the DPA Morehead office left February 2001 to become a part-time Assistant County Attorney with a salary of \$10,000 more than he was making at DPA. As a part-time prosecutor, he also can do civil practice. An attorney from DPA's Elizabethtown office left in 2000 for more money as a prosecutor. The Kenton County public defender office has lost two attorneys since 2000 to more lucrative private practice and one to the Commonwealth Attorney's Office. The Stanford public defender office lost an attorney to the Rockcastle County Attorney's staff.

"Adequate salaries for criminal justice professionals is vital to a healthy, responsible, competent criminal justice system." Public Advocate Ernie Lewis said. "At a time when the reliability of verdicts is questioned as never before, one means for ensuring that public confidence is restored is through salary parity. I invite the Attorney General and the Prosecutor's Advisory Council to seek a way for salary parity between prosecutors and defenders to become a reality." ■

## DPA KNOWS EDUCATION PAYS AT MURRAY STATE UNIVERSITY

by Thomas C. Glover

On August 31, 2000 the Department of Public Advocacy (DPA) formally announced the creation of an internship program at Murray State University (MSU). The intern program is an important part of the partnership between DPA and MSU, which includes the only public defender trial office in the United States housed on a university campus. Public Advocate Ernie Lewis became excited about the possibilities available to our agency after talking with Senator Bob Jackson at the state capitol several months earlier. The two of them then energized DPA and Murray State to go forward with the planning and execution of this unique partnership. Senator Bob Jackson (D. Murray) said of the program, "This is a wonderful experiment and a model for universities across the nation. I am proud that it is in Kentucky and even more proud that it originated at Murray State University. I hope that we will be able to expand the Murray model to universities throughout the Commonwealth." Murray State University Vice President Jim Carter was instrumental in the launch-

ing of this program and he observed, "This is a unique and wonderful partnership for us assisting both our service regions as well as providing an excellent learning opportunity for our students. Murray State is honored to be a part of it."

The intellectual seed arose from the work of a Harvard professor Mark Moore, who writes about the creation of public value in his book *Creating Public Value: Strategic Management in Government* (1995). The Public Advocate was educated at a national Leadership Conference by Mark Moore. Having been educated by him and read his book, Ernie Lewis used it as the basis for the partnership. In his work, Moore understands that the resources of government, particularly state government, are finite and creative ways must be found

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Tom Glover

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to maximize the good that government can do without asking the taxpayer to fund ever larger government. It was this paradigm in mind that the Public Advocate issued his instructions which would guide this project: "Create value for our clients, while at the same time enhance the academic standing and competitiveness of Murray State University. We can accomplish something at Murray State that can be transported to other towns which house both a DPA trial office and a regional university." With Ernie Lewis' guidance the internship program quickly became the cornerstone of the entire partnership.

In creating the internship program there were three constituencies which had to be served. The University, DPA, and the students all had to receive tangible benefits from the partnership in order for it to be a success. The benefit to DPA and its clients were very obvious from the start. The student interns provided free labor that greatly enhanced the productivity of each office they served. They performed many routine tasks that freed DPA employees to tackle other tasks. Their greatest value though was on the intellectual front in which several interns made significant contributions to trial strategies in several murder cases. The interns are the cream of the intellectual crop from the MSU Criminal Justice Department, hand-picked by Dr. Middie Southerland, the director of the department and Professor John Homa, the acting director. The Murray Trial Office was without support staff for the first seven months of its existence and the interns literally allowed us to survive those first months, while providing an ever-increasing level of service to our clients.

The University received recognition and a valuable recruiting tool in an ever-increasing competitive marketplace. Murray State has an intern program, which is unique in the entire United States, and will help its students reach an ever higher level of achievement. As time passes DPA and MSU will find other ways in which they can help each other and forge new bonds which will make the partnership valuable for all concerned.

The most important constituency, the student interns, are receiving access to the very criminal justice system that they have studied in the abstract for the previous three years. It gives them the opportunity to explore both law enforcement and the practice of law as future career choices before committing to a career choice. They see the criminal justice system in the real world as it grinds out justice on a daily basis. They gain insight into and an appreciation for the actors who make the criminal justice system function. Victims and citizens accused of a crime are no longer a statistic or a number, but become real human beings each bearing a story worth knowing and telling. The students leave the program with an appreciation for the complexity and ambiguity of life, which can only come from real experiences. Finally, the students may use their Directing Attorney as a reference when seek-



*MSU President, Kern Alexander (far right), introduces (l-r) Shelly Strickland, Crystal Rich, Stacey Hinson, Brian Hart, Jeff Higgins and Jennifer Ballard*

ing employment and we wrote several letters of recommendations for students going on to law school upon graduation.

To date the value of the program has been demonstrated by the return of four of the seven fall interns for a second internship in the spring semester. Three new interns have joined us as well for the spring semester keeping our numbers constant at seven each semester.

To become an intern at present one must be a senior criminal justice major with a cumulative GPA of 2.50 out of 4.00, although most interns have a 3.00 or better. The students submit a resume and go through a job interview before final selection. An intern does not have to have a car, but the experience is enhanced if they have transportation for trips to court, the jail and the prosecutor's office. The interns sign a confidentiality agreement upon entering the program so they realize the significance of the attorney-client privilege.

The interns work 150 hours over the course of the semester and receive 3 hours of criminal justice credit on a pass-fail basis. The interns attend four classes during the course of the semester. DPA staff teach these classes on selected topics dealing with the practice of criminal law. During these classes we touch base with each intern to see how their internship is progressing. We identify and address any problems at these classes. Our interns are also invited to attend the Western Regional Juvenile Summit. In the future the intern program will be expanded beyond criminal justice to allow students in other departments to participate. Stacey Hinson, an intern who worked with us both semesters, remarked, "I have gained real life experience that will help me in whatever career path I choose. The internship is the perfect ending to my college career at Murray State University."

In working with MSU in the creation of this partnership, we discovered that MSU, as a regional university, is tasked to provide educational opportunities to a region that is almost exactly that of DPA's Western Region. Every Trial Office in the West is within MSU's coverage area. MSU is about to open a campus in Hopkinsville, which will allow a student to get a bachelor's and master's degrees without ever leaving Hopkinsville. DPA's western trial offices in Murray, Paducah,



Madisonville and Hopkinsville have hosted MSU interns this year. We hope to include our other western trial office in Henderson shortly. We are looking to create intern opportunities over the summer and Christmas breaks for students when they return home at any office in DPA, which is convenient to the students.

In the end this remarkable program would never have gotten off the ground without the complete support of Governor Paul Patton, Public Protection and Regulation Secretary Ron McCloud, Senator Bob Jackson and MSU President Kern Alexander. The unique vision of Public Advocate Ernie Lewis was instrumental in the creation and success of our partnership. Ernie observed, "I am excited by the progress made by Murray State University, President Alexander, Jim Carter, Tom Glover, and the wonderful Murray students in getting this program launched. It provides a model that we can use throughout Kentucky to assist students to gain real life experience in the criminal justice while at the same time providing services to indigents and their families and the DPA offices representing them. This is government at its best."

The challenge now is to create partnerships with Kentucky's other regional universities and provide this opportunity to all of Kentucky's students of higher education. It is one way that the Department of Public Advocacy can demonstrate their belief in Governor Patton's vision for all of Kentucky that "WE KNOW EDUCATION PAYS." ■

## Dr. Alma Hall Honored for Increasing Defender Leadership

At the September 2000 Department of Public Advocacy Quarterly Leadership Education Program, Public Advocate Ernie Lewis awarded Dr. Alma Hall, Chair of Georgetown College's Communication Department, a Public Advocate's Award for her significant contribution to the development of public defender leaders in Kentucky.

In presenting the Award, Lewis said, "One of my most important tasks over the past 5 years has been my development as a leader, the development of leaders at the top of our organization, and the development of public defender leaders throughout our statewide public defender system. Attorneys are often named as directors of local offices or to other responsibilities because they are good litigators. Leadership and management are not taught in law school. Thus, the Department has developed a leadership education program that has involved DPA produced programs, Governmental Services Center Education, and the help of top notch outside professionals like Dr. Hall.

In awarding Dr. Hall, Public Advocate Ernie Lewis said, "Since I became Public Advocate in 1996, Dr. Alma Hall has assisted me as Public Advocate and the members of my leadership team in learning how to lead DPA in today's increasingly complex world. Her help has been broad, continuous, and cutting edge. She has met with us as a leadership team, educated us on leadership theory and practice, helped us develop as a working team, assisted us in strategic planning, identified our individual approaches to leadership, educated our leaders and future leaders on the importance of other perspectives in problemsolving, educated those doing teaching at our new attorney education programs on the skills of teaching and facilitating learning, presented at our Annual Conference with other distinguished professionals on the tension between independence and interdependence, helped our support staff become better communicators, advised our nationally known faculty at our week long intensive litigation

institute on the skills of facilitating the learning of critical judgment skills of our litigators, consulted with my Deputy and myself on matters critical to DPA, and otherwise been a friend to us at DPA."

Most recently, in September 2000 Dr. Hall met with 50 present and future defender leaders at DPA's Quarterly Leadership Education Program. She taught primarily on the subject of how to use the art of reframing as a way to better analyze and more effectively solve problems.

At Public Advocate Lewis request, a Workgroup on Professionalism and Excellence co-ordinated by Deputy Public Advocate Ed Monahan was created to address DPA's culture. Dr. Hall met with that group of leaders from across our Department over an extended period of time in an effort to change the culture of DPA's defender organization. Dr. Hall brought her high level of knowledge, applied her immense creativity, and assisted this group from diverse parts of our organization to make recommendations to the Department's leadership team on advancing a culture of professionalism and excellence. These recommendations have been implemented by DPA leaders, and they continue to bear fruit in improving the organization as evidenced by a recent survey of DPA staff done by Dr. Hall.

Lewis said, "I have enjoyed the partnership that Dr. Hall and Georgetown College have developed with the Department of Public Advocacy. I believe we have both given what we have to give to the other. I have spoken to her classes on leadership each year since 1997. My Deputy, Ed Monahan, has spoken to an organizational communication class at Georgetown on application of performance coaching and evaluation in the workplace. In return, Dr. Hall has placed

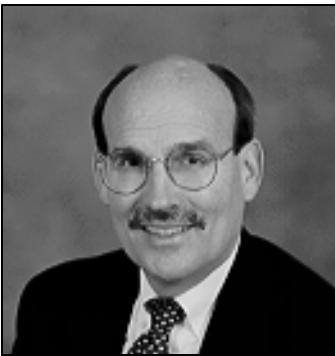
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high caliber interns from Georgetown College with the Department of Public Advocacy and consulted with DPA teaching us about effective leadership.”

Deputy Public Advocate Ed Monahan, who heads up DPA’s Education efforts, commented on the value Dr. Hall has added to DPA, “The investment Alma Hall has made in DPA is one that continues to afford us many lasting dividends from our new attorney education programs to our leadership education series of programs. She has endowed us with her transformative spirit of learning. We are better professionals. Our clients are better served. The people of Kentucky have more value from DPA.” In honoring her with this special award, Lewis made clear his appreciation for Dr. Hall, “I want to thank Alma and Georgetown College for her immense contributions to the Commonwealth of Kentucky and the Department of Public Advocacy.”

In receiving the Award, Dr. Hall said, “Education, at its best, serves a lifelong purpose. Like leadership, education is the vehicle through which people and organizations change and grow. I thank you for allowing me to grow and change with you. I am so proud to be associated with such an outstanding group of leaders.” ■



*Ernie Lewis, Public Advocate*

## **Defender Leadership Increased MN-KY Sister State Partnership Inaugurated**

Fifty-three Defender Leaders from across Kentucky gathered at Lake Cumberland State Park in February 2001 to learn better defender leadership skills within Kentucky’s and Minnesota’s full-time statewide public defender programs.

Chief Minnesota Defender John Stuart, who has been a public defender since 1978 and who has led his statewide program for 11 years, gave the keynote address for DPA’s Leadership Practice Institute. “There is no substitute for the deep belief in the work we do as public defenders. We are the spiritual heirs of the lawyers who worked in the civil rights movement,” John said. “Besides these deep beliefs, public defender leadership requires skills, and those skills take as much work as do the development of defender litigation skills. Public Defender Leadership has skills we can learn together.”

John Stuart told us about a 12-year effort in Minnesota that he was involved with to bring about better representation of juveniles. Through that effort which had significant failures but which eventually succeeded, John learned that we:

- can obtain support for what we believe in;
- have to listen to others who see things differently than us;
- must adjust our thinking about how long it will take to succeed, and
- need relationships with others who think like us and who think differently than us.

“A quality public defender program has a deep commitment to clients that is clearly expressed with consistency,” John said. “Kentucky’s public defender program is known for its quality training and its client centeredness.”



*John Stuart*

Following John’s remarks, Public Advocate Ernie Lewis invited the defender leaders to practice their leadership in a principled way. He invoked Robert Kennedy’s quote in calling defenders to be change agents, “Some people see things as they are and ask why. Others see things as they would be and ask why not?”

“I believe in leadership,” Lewis proclaimed. “Defender leadership is what will provide the needed improvement in representation of clients across Kentucky.” Lewis concluded his remarks by appealing for leadership with integrity, humility and virtue “We lead for other purposes. It’s not about us. Effective leaders are humble. As Psalm 91 instructs, we are like grass; though in the morning it shoots up, by evening it droops and withers...so make us know how few are our days, that our minds may learn wisdom.”

Chief State Public Defenders Lewis and Stuart inaugurated the Minnesota-Kentucky Sister State Defender Leadership Partnership. In launching this effort, these Chief State Defenders very much want to foster learning and help between the leaders of their state public defender systems. Lewis said, “We want our leaders to have a partner so there’s more perspective and so there’s another person to consult with on the difficult issues and problems we often face in our management and leadership as defenders. I’m convinced our clients will benefit from our being better coaches, problem solvers, leaders with the good help of our colleagues in Minnesota.”

Stuart said, “I grew up without sisters so I don’t know exactly what to expect but I certainly do look forward to a long-term, important relationship with Kentucky, where we talk to each other, and share our experiences. You have a great program and we are already enjoying being your sister state.” ■

# 2001 GENERAL ASSEMBLY CRIMINAL JUSTICE LEGISLATION

by Ernie Lewis, Public Advocate

The first annual session of the General Assembly has come and gone. There were many pieces of criminal justice legislation proposed, but few passed. There are several possible explanations for this. First, this was the first such session, and members were learning how to get things accomplished in such a short session. Second, there was no interim, and thus no criminal justice issues had been percolating through the Interim Judiciary Committee. Likewise, the Kentucky Criminal Justice Council operates on a two-year time frame, and is not due to issue another report to the Governor and the General Assembly until July 1, 2001. Thus, no issues were raised by the Criminal Justice Council. However, as will be seen, on at least two issues, the Kentucky Criminal Justice Council had significant influence on the passing of two bills during this session.

## HOUSE BILL 1

The most substantive change in criminal law legislation during 2001 was the passing of House Bill 1. This bill was sponsored by Speaker Jody Richards, and was similar to a bill which almost passed the 2000 General Assembly. Its provisions are as follows:

- Section 1 creates a new section of KRS 508 that establishes the crime of terroristic threatening in the first degree. The primary element of this new offense is the intentional making of false statements that the defendant or another person “has placed a weapon of mass destruction” in a school, a school bus, at a building where a school event is being held, or at a government building. An alternative means for committing 1<sup>st</sup> degree terroristic threatening is the placing of a “counterfeit weapon of mass destruction at any location or on any object” at the school sites above. It is a defense to this charge if the defendant communicates the threat of another to school or law enforcement officials, believing the threat to be true, and revealing the name of the person making the threat. Terroristic threatening in the first degree is a Class C felony.
- Section 2 creates terroristic threatening in the second degree, also contained in KRS 508, and making unlawful 3 particular acts at a “school function.” First, it is unlawful to threaten to “commit any act likely to result in death or serious physical injury to any student group, teacher, volunteer worker, or school employee” where the threat is “related to their employment...or work or attendance at school, or a school function.” A second way to commit terroristic threatening in the second degree is by making false statements that “he or she has placed a weapon of mass destruction at any location” other than

those specified in the terroristic threatening in the first degree section. A third means of committing this offense is the placing of a counterfeit weapon of mass destruction in any location other than a school. The same defense applies to terroristic threatening in the second degree as created in Section 1. Terroristic threatening in the second degree is a Class D felony.

- Section 3 amends KRS 508.080 to change the previous crime of terroristic threatening to terroristic threatening in the 3<sup>rd</sup> degree, a Class A misdemeanor.
- Section 4 of the act creates a new section of KRS 527 creating the crime of the use of a weapon of mass destruction in the first degree. The primary element of this new offense is the placing of a weapon of mass destruction “at any location in the Commonwealth” resulting in death or serious physical injury. This is a Class A felony where serious physical injury results. Where death results, it is a capital offense.
- Section 5 creates the offense of the use of a weapon of mass destruction in the second degree. This offense can be committed in two ways. First, the defendant commits the act by placing a weapon of mass destruction anywhere in the state and as a result someone is physically injured. A second way to commit this offense is by placing a weapon of mass destruction in a school, a school bus, the site of a school activity, or a government building, without injury. This is a Class B felony.
- Section 6 creates the offense of the use of a weapon of mass destruction in the third degree. This offense is defined as placing a weapon of mass destruction anywhere in the Commonwealth. This will be applicable where the weapon is placed in a location unassociated with a school, and where no one is injured. This is a Class C felony.
- Section 7 amends KRS 500.080, a definitional section of the Penal Code, in order to classify a “weapon of mass destruction” as a deadly weapon. Section 7 also defines “weapon of mass destruction” as any destructive device as defined in KRS 237.030, any weapon “designed or intended to cause death or serious physical injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors,” any weapon involving a “disease organism,” or any weapon that is “designed to release radiation or radioactivity at a level dangerous to human life.” KRS 237.030 defines a destructive device as “any explosive, incendiary, or poison gas bomb, grenade, mine, rocket, missile, or similar

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device and includes the unassembled components from which such a device can be made.”

- Section 8 amends the capital punishment statute, KRS 532.025, by amending the aggravating circumstance #3 to read “the offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one (1) person in a public place by means of a **weapon of mass destruction**, weapon, or other device which would normally be hazardous to the lives of more than one (1) person.”

#### **SENATE BILL 76**

Sen. Gerald Neal sponsored this bill. It creates a new section of KRS 15A, which would accomplish this following:

- Section 1 outlaws racial profiling in Kentucky. Specifically, the primary section reads that no “law enforcement agency or official shall stop, detain, or search any person when such action is solely motivated by consideration of race, color, or ethnicity, and the action would constitute a violation of the civil rights of the person.”
- Significantly, Section 1 applies to both traffic stops and stops of pedestrians.
- The Justice Cabinet, in consultation with others, is required to write and implement a model policy.
- The model policy is disseminated to all law enforcement agencies in Kentucky by the Kentucky Law Enforcement Council.
- All law enforcement agencies are “urged” to implement a policy at least as stringent as the model policy. This local policy is copied to the Kentucky Law Enforcement Council and the Kentucky Law Enforcement Foundation Program Fund (KLEPF).
- If a local law enforcement agency does not want to have a policy, then that agency and its officers will not be receiving KLEPF funds. Further, if the policy as written is not approved by the Secretary of the Justice Cabinet, that likewise will lead to the prohibition of receiving KLEPF funds.
- Local law enforcement agencies must create an administrative action which is “in accordance with other penalties enforced by the agency’s administration for similar officer misconduct” for their officers who violate the racial profiling policy.
- This issue had been discussed in the Kentucky Criminal Justice Council, and eventually was the subject of an Executive Order of the Governor.

#### **HOUSE BILL 281**

Rep. Jesse Crenshaw sponsored this bill. It is similar to a bill he introduced in the 2000 General Assembly. This bill origi-

nated in the Kentucky Criminal Justice Council, and was vigorously supported by the Justice Cabinet. The Kentucky Criminal Justice Council had found that there was a constitutional provision prohibiting convicted felons from voting and serving on jury duty unless those rights were restored by the Governor. Because it was unlikely that a constitutional amendment on this topic would pass, the Council supported the streamlining of the existing procedure for the partial restoration of civil rights. Rep. Crenshaw’s House Bill 281 accomplishes that, reducing a long procedure down to only 4 steps. The bill does this by the following provisions:

- The Department of Corrections is required to write administrative regulations “to implement a simplified process for the restoration of civil rights to eligible felony offenders.” The rights being restored by this partial pardon process are the rights to vote, to serve on a jury, to obtain a professional or vocational license, and the right to hold elective office.
- The Department of Corrections is required to tell offenders about the process, and to provide offenders with a form that they sign upon release requesting their rights be restored.
- The Department of Corrections generates a list monthly of those persons “eligible” for this procedure. An “eligible felony offender” is defined as someone who has reached the maximum expiration date or has received final discharge from the Parole Board.
- The Department of Corrections ensures that restitution has been paid and that there are no warrants, charges or indictments pending against the inmate.
- The Department of Corrections gives notice to the Commonwealth’s Attorney in the county of commitment and residence.
- The Department of Corrections forwards to the Governor on a monthly basis information on all those eligible felony offenders who have signed the form and thus are requesting a partial pardon.

#### **SENATE BILL 58**

Senate Bill 58 is the family court bill sponsored by Senators Stivers and Stine. This bill submits a constitutional amendment to the voters, which would amend Section 112 of the Kentucky Constitution allowing the Supreme Court to “designate one or more divisions of Circuit Court within a judicial circuit as a family court division. A Circuit Court division so designated shall retain the general jurisdiction of the Circuit Court and shall have additional jurisdiction as may be provided by the General Assembly.” Further, the bill allows for district judges who are qualified to be circuit judges who are assigned by the Chief Justice to serve as family court judges to become Circuit Judges in January 2003. This amendment will be on the ballot.

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### HOUSE BILL 105

House Bill 105 was sponsored by Rep. Feeley and 10 co-sponsors. This bill provides for an unusual enhancement of KRS 514.030 theft when a person has driven away from a gas station without paying for it. The bill amends KRS 532.356 to allow the court to suspend a driver's license for 60 days for a defendant who is being sentenced for "theft of gasoline" for a second or subsequent time.

### HOUSE BILL 130

House Bill 130 is sponsored by Reps. Wilkey and Thomas. The bill requires that inmates of county detention centers who have court in another county "shall be transported by the sheriff of the county where the trial or court proceedings are to be held."

### HOUSE BILL 108

House Bill 108 is sponsored by Reps. Gray, Tapp, Colter, Stewart, and Turner. It requires law enforcement agencies participating in a gun buy-back program to check whether the firearms are stolen, and to return them to their owners. Further, it requires law enforcement to "arrest the thief or any person who possessed the firearm knowing it was stolen." Finally, it requires the law enforcement agency to determine in writing whether a gun to be destroyed was used in a crime, and if it was used in a crime it must be retained for evidence. Rifled firearms determined not to be used in a crime must be subjected to having a fired bullet and fired cartridge case retained for possible used as weapon. Smooth bore firearms also will have a fired cartridge case retained.

### HOUSE BILL 234

Reps. Pullin, Callahan, Denham, Hall, Jenkins, Sims, Vincent, and Westrom sponsored this bill. It requires the Department of Corrections to "maintain a photographic record of each inmate committed to its custody" and to update the record one time every two years.

### HOUSE BILL 324

Rep. Gross Lindsay sponsored this bill. This bill creates changes to the Court of Justice. The following changes have been made:

- The 29<sup>th</sup> Judicial Circuit now consists of only Adair and Casey Counties, dropping Cumberland and Monroe.
- The 40<sup>th</sup> Judicial Circuit adds Cumberland and Monroe to Clinton County, and drops Russell and Wayne Counties.
- A new 57<sup>th</sup> Judicial Circuit is added, consisting of Russell and Wayne Counties.
- The 41<sup>st</sup> Judicial Circuit, consisting of Clay, Jackson, and Leslie Counties, is entitled to a 2<sup>nd</sup> circuit judge.
- The 51<sup>st</sup> Judicial Circuit, consisting of Henderson County, is entitled to a 2<sup>nd</sup> circuit judge.
- The 5<sup>th</sup> Judicial District, consisting of Crittenden, Union, and Webster Counties, is entitled to a 2<sup>nd</sup> district judge.
- The 37<sup>th</sup> Judicial District, consisting of Carter, Elliott, and Morgan Counties, is entitled to a 2<sup>nd</sup> district judge.

### EFFECTIVE DATE

Attorney General's Opinion OAG 01-4 declares that the normal effective date for legislation from the 2001 Regular Session of the Kentucky General Assembly is June 21, 2001. ■



*Members of the Blue Ribbon Group*

## Joining a National Trend, Restoration of Civil Rights Simplified in Kentucky

In January 2000 the sentencing project in Washington, DC issued a report indicating a wave of activity to reform felony voting laws for the first time in a century. The study outlined legislative and legal activity in thirteen states and in Congress over the prior year to address the issue of whether convicted felons and ex-felons should have the right to vote. Kentucky acted in line with this trend in passing a bill in the 2001 General Assembly which was recommended by the Kentucky Criminal Justice Council and which was sponsored by Representative Jesse Crenshaw of Lexington.

These state and federal efforts were spurred in large part by a 1998 study by Human Rights Watch and The Sentencing Project which found that 13 % of African American males and nearly 14 million Americans are disenfranchised due to felony convictions. The report, *Regaining the Vote: An Assessment of Activity Relating to Felon Disenfranchisement Laws* (2000), sets out these state and federal activities from consideration of new laws to litigation.

Marc Mauer, Assistant Director of The Sentencing Project, stated that "The expansion of the criminal justice system over the past 25 years has created an ever-larger pool of ineligible voters. Current efforts to restore the right to vote to offenders who have 'paid their debt' to society may help to bring the U.S. more in line with other democratic nations."

The report also documents the often erratic nature of the restoration process in several states. In Alabama, ex-offenders who apply for a pardon are required to provide DNA samples. In Virginia, ex-felons (both violent- and non-violent offenses) are required to wait five years before applying for a pardon, but persons convicted of a drug offense must wait seven years.

The 1998 report on disenfranchisement had found that nearly three-quarters (73 %) of the total disenfranchised population of 3.9 million were not in prison. Of these, 1.4 million were ex-offenders who had completed their sentences, one million were offenders sentenced to probation, and nearly half a million were on parole.

*Regaining the Vote* is available from The Sentencing Project, 1516 P St. NW, Washington, D.C. 20005, (202) 628-0871, and is on-line at <http://www.sentencingproject.org/pubs/regainvote.pdf> from The Sentencing Project which is at [www.sentencingproject.org](http://www.sentencingproject.org).

The 2001 Kentucky General Assembly passed House Bill 281 simplifying the process for convicted felony offenders to seek restoration of their civil rights. The Bill was sponsored by Representative Jesse Crenshaw of Lexington and cosponsored by Paul Bather of Louisville, Sheldon Baugh of Russellville, Perry Clark of Louisville, Barbara Colter of Manchester, Joni Jenkins of Shively and Reginald Meeks of

Crenshaw explained the Bill before the Senate Judiciary Committee as follows:

"HB 281 requires the Department of Corrections to promulgate administrative regulations to simplify the process for restoration of civil rights for eligible felony offenders who have served out their sentence or been discharged by the Parole Board.

The Department of Corrections will use existing criteria to generate a monthly list of eligible felony offenders for review and consideration by the Governor for a partial pardon. Under the existing criteria, the offender must not have any pending warrants, charges or indictments and have paid full restitution as ordered by the court or the Parole Board.

The Governor reviews all of the background information and makes a determination on a case-by-case basis. A partial pardon restores the individual's right to vote, serve on a jury, obtain various professional and vocational licenses, and hold elective office.

HB 281 originates from a recommendation of the Kentucky Criminal Justice Council. In the Fall of 1999, the Council's Corrections Committee studied issues related to restoration of civil rights for convicted felons and identified a number of concerns including the low number of ex-offenders seeking restoration and the possibility that the process itself may be deterring offenders from applying.

While a number of ex-offenders do apply for restoration of their civil rights, this number has continued to decline over recent years. During calendar year 2000, there were a total of 3801 felony offenders who served out their sentence or were discharged by the Parole Board. Since this number does not include felony offenders who completed probation; offenders with a federal felony conviction; or persons with a felony conviction in another state who reside in Kentucky, the actual number of eligible offenders actually exceeds the 3801.

Of those who were eligible, a total of 887 or 23% applied for restoration and 578 or 15% had their civil rights restored.

Under current policy, the Department of Corrections follows an 11-step process in which the offender must first request an application; complete the two-page form; have the form signed by his or her parole officer or pay to have it notarized; and mail it back to the Department along with a fee. The Department of Corrections then conducts an investigation and compiles the necessary information.

It is estimated by the Department of Corrections that 20-25% of these applications are rejected each year for technical reasons, *i.e.* the application was not completed properly; it was not notarized or signed by a probation/parole officer; the offender did not sign the application; or the fee was not

Louisville. It passed the House by a vote of 80-8 and the Senate by a vote of 34-4. Representative



Rep. Jesse Crenshaw

included. HB 281 makes the process simpler for the offender and for the Department of Corrections by eliminating the application process and fee.

In actuality, a number of factors may be contributing to the underutilization of the restoration process by offenders. These factors may include lack of information on the part of the offender; being intimidated by the requirements of the application process since the average offender reads at the 8<sup>th</sup> grade

level; the perception that restoration is unlikely; or the offender's lack of prior experience in exercising the right to vote. The fact is that the pool of eligible felony offenders who do not apply continues to grow each year.

At the present, 33 states provide for the restoration of civil rights at the end of incarceration or final discharge.

With significant increases in the number of individuals who have been incarcerated over the past 10 years, it is inevitable that a growing number of these felony offenders will be released back into the community each year.

Since these individuals have paid their debt to society, it is in the best interest of the Commonwealth to assist them in becoming law abiding and productive members of the community.

Excluding people from the privileges of citizenship is not particularly helpful if you're trying to rehabilitate them. Society works better when we include as many people as possible in our community as full contributing citizens.

Having the ex-offender invest in his or her community and participate in our democracy increases the likelihood of his or her successful reintegration into society.

HB 281 was amended in the House Judiciary Committee to expand the notice provided to Commonwealth's Attorneys to include the offender's county of commitment and county of residence. This will provide the prosecutor with information and an opportunity to forward any objections regarding an offender's request for restoration of civil rights to the Office of the Governor. The Commonwealth's Attorneys Association requested this amendment and with this amendment added, the Commonwealth's Attorneys Association has raised no opposition to this bill.

HB 281 was amended on the House floor to require that the Department of Corrections to inform eligible felony offenders about the restoration process and provide a standard form for the offender to sign upon release to formally request that his or her civil rights be restored."

Representative Crenshaw concluded, "Eligible felony offenders who are not under the supervision of the Department of Corrections at the time of their release, will need to contact the Department directly to request that their case be considered for restoration."



Kim Allen

The Bill was signed by Governor Paul Patten on March 19, 2001 and reads as follows.

**SECTION 1. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:**

- (1) *The Department of Corrections shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement a simplified Process for the restoration of civil rights to eligible felony offenders. As Part of this simplified process, the Department of Corrections shall:*
  - (a) *Inform eligible offenders about the Process for restoration of civil rights and provide a standard form which individuals may sign upon their release to formally request that the Department of Corrections initiate the process;*
  - (b) *Generate a list on a monthly basis of eligible offenders who have been released by the Department of Corrections or discharged by the Parole Board and who have requested that their civil rights be restored;*
  - (c) *Conduct an investigation and compile the necessary information to ensure that all restitution has been paid and that there are no outstanding warrants, charges, or indictments;*
  - (d) *Provide notice to the Commonwealth's attorney in the county of commitment and to the Commonwealth's attorney in the offender's county of residence, setting out in the notification the criminal case number and chances for which the offender was convicted; and*
  - (e) *Forward information on a monthly basis of eligible felony offenders who have requested restoration of rights to the Office of the Governor for consideration of a partial pardon.*
- (2) *As used in this section, "eligible felony offender" means a person convicted of one (1) or more felonies who:*
  - (a) *Has reached the maximum expiration of his or her sentence or has received final discharge from the Parole Board;*
  - (b) *Does not have any pending warrants, charges, or indictments; and*
  - (c) *Had paid full restitution as ordered by the court or the Parole Board.*
- (3) *As used in this section, "civil rights" means the ability to vote, serve on a jury, obtain a professional or vocational license, and hold an elective office. It does not include the right to bear arms.*
- (4) *Any eligible offender not provided for under subsection (2) of this section may submit an application directly to the Department of Correction to initiate the process outlined in subsection (1) of this section. ■*



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### *Legislative Update*

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